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ONE HUNDRED SIXTH CONGRESS

# Congress of the United States

## House of Representatives

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October 30, 2000

### BY FACSIMILE

The Honorable Alexis M. Herman  
Secretary  
Department of Labor  
200 Constitution Avenue, N.W. - Room S2018  
Washington, D.C. 20210

Dear Madam Secretary:

This letter follows up on my December 3, 1999 through August 10, 2000 letters about the Department of Labor's (DOL's) improper use of contractors in its rulemakings, especially its ergonomics rulemaking. I questioned possible augmentation of DOL full-time equivalents (FTEs) by use of contractors, DOL's improper use of contractors for inherently governmental functions in the rulemaking process, and DOL's use of contractors to unfairly bias its ergonomics rulemaking. This letter adds another major concern: an obvious ethical conflict-of-interest between the DOL official leading the ergonomics rulemaking effort (Marthe Kent) and the lead ergonomics contractor (the Eastern Research Group or ERG), which substantially taints the rulemaking. I believe that this conflict of interest deserves further Congressional investigation because it could further jeopardize the Federal Government's ability to withstand a court challenge for a final rule.

Both Meridian Research, Inc. and ERG received substantial contracts and/or subcontracts for the ergonomics rulemaking; in fact, ERG received at least \$3.7 million in awards for this rulemaking. During December 1994, the three principals of Meridian Research (including President Marthe Kent) joined DOL's staff. In 1995, Meridian Research sold its assets to ERG.

On September 1, 2000, DOL provided a partial answer to my August 10th questions, including an evasive answer about Ms. Kent's involvement in assigning work to ERG. DOL stated, "Ms. Kent did not review ERG bids or proposals before DOL awarded a basic ordering agreement to that company." However, the key is not involvement in the award of a basic ordering agreement contract but the determination and assignment of task orders to a basic ordering agreement contractor.

On September 18th, the subcommittee sent DOL a draft subpoena for document production relating to Ms. Kent. On September 19th, DOL agreed to provide documents without a subpoena "before Congress adjourns." On Friday night, October 27th, DOL provided an incomplete response to my August 10th and subsequent questions about Ms. Kent. DOL argued that, because Ms. Kent was not involved in the award of six basic ordering agreement contracts (including one to ERG), she could not have been "involved" in improperly channeling DOL business to ERG.

However, as DOL acknowledges, Ms. Kent was "appropriately involved in the determination and assignment of task orders under those contracts [with ERG] ... This included substantive programmatic review and cost information associated with those task orders." In other words, Ms. Kent became the DOL official who assigned substantial additional work to ERG.

On December 16, 1994 (i.e., before officially becoming a Federal employee on December 19th), she signed a "Conflict of Interest Disqualification," disqualifying herself from personal participation in any Meridian Research and ERG matters. The disqualification states, **"Specifically, I will not be involved in assigning work to Meridian, Its Successor [ERG], or any other contractor, recommending that Meridian, Its Successor, or any other contractor be given additional work ... or ... a new contract"** (emphasis added). The disqualification appears to be permanent. After Ms. Kent's hiring at DOL, ERG received at least \$1.2 million in additional contract and task order awards for this rulemaking.

DOL's October 27, 2000 reply admits that Ms. Kent did not recuse herself, as promised in her 1994 disqualification. What does DOL mean by "appropriately involved"? Ms. Kent's non-recusal is obviously improper and possibly illegal.

Also of interest, on December 27, 1994, Meridian Research Vice President William Perry and Secretary/Treasurer Robert Burt became full-time DOL employees. During January through March 1995, while Mr. Burt was a full-time Federal employee, he continued to conduct Federal contracting work for Meridian Research and signed documents on Meridian Research letterhead as its new President. In an October 1996 report, the House Education and the Workforce Subcommittee on Oversight and Investigations questioned the propriety of this behavior and reported that the General Accounting Office (GAO) "is reviewing several matters relating to the hiring of MRI's [Meridian Research's] principals."

As part of the 1995 transfer of Meridian Research's assets to ERG, counsel for ERG confirmed to the subcommittee that Ms. Kent's son (Mr. Rosenthal) transferred from Meridian Research to ERG as a professional staff member.

I request that you respond to the questions in the enclosure. Please deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on Friday, November 10,

2000. If you have any questions about this request, please call Deputy Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,



David M. McIntosh

Chairman

Subcommittee on National Economic Growth,  
Natural Resources, and Regulatory Affairs

Enclosure

cc: The Honorable Dan Burton  
The Honorable Dennis Kucinich  
The Honorable Anne Northup

The Honorable Mike Enzi  
Randolph Moss, Esq., DOJ  
David Ogden, Esq., DOJ

- Q1. Documents submitted by the Eastern Research Group (ERG) to the subcommittee reveal that, from 1992 to 1999, the Department of Labor (DOL) awarded five basic ordering agreement contracts to ERG for the ergonomics rulemaking: J-9-F-1-0014, J-9-F-4-0008, J-9-F-3-0043, J-9-F-5-0050, and J-9-F-9-0010. Please identify whether each of the five was competitively awarded or not, and, if so, which other companies competed and which of these were also awarded basic ordering agreement contracts.
- Q2. Please indicate the total dollars awarded for the ergonomics rulemaking to each basic ordering agreement contractor (including ERG), including for all task orders.
- Q3. DOL's October 27, 2000 reply states, "Ms. Kent was not involved in the awarding of the contract to the six vendors, including ERG, under the aforementioned RFP" (emphasis added). Please indicate if Marthe Kent was involved in the award of any of the **three** basic ordering agreement contracts to ERG after her December 1994 hiring, and, if so, which ones.
- Q4. DOL's October 27th reply states, "She [Ms. Kent] was appropriately involved in the determination and assignment of task orders under those contracts."
- a. What does "appropriately involved" mean?
  - b. For which specific task orders did Ms. Kent make a determination and an assignment to ERG? Please identify the dollars paid to ERG for each such task.
- Q5. On August 10, 2000, the subcommittee asked to see Ms. Kent's records (e-mails sent and received, memoranda sent and received, etc.) to ensure that she recused herself from all decisions relating to contract awards and additional task orders for ERG. In DOL's September 1st reply, DOL produced Ms. Kent's 1994 disqualification relating to ERG. The disqualification states, "Specifically, I will not be involved in assigning work to Meridian, Its Successor [ERG], or any other contractor, recommending that Meridian, Its Successor, or any other contractor be given additional work ... or ... a new contract." In DOL's October 27, 2000 reply, DOL acknowledges, Ms. Kent was "involved in the determination and assignment of task orders under those contracts [with ERG] ... This included substantive programmatic review and cost information associated with those task orders." In other words, Ms. Kent became the DOL official who approved additional, large task order awards to ERG.

Was the 1994 disqualification permanent? If so, why didn't Ms. Kent recuse herself from all decisionmaking relating to additional task order assignments to ERG? If it was not permanent, why didn't DOL provide a copy of any document ending Ms. Kent's disqualification in assigning work to Meridian Research's successor, i.e., ERG? Or, does no such document exist?

- Q6. DOL's October 27th reply states, "Once both parties [DOL and ERG] come to a fair and reasonable agreement on the cost and time involved in the proposed task, a signed

requisition by the authorized program official is forwarded to the Department for processing." Please provide a copy of the signed requisition by the authorized program official for each ERG task order approved since the December 1994 hiring of Ms. Kent and please identify the organizational reporting relationship of these authorized program officials to Ms. Kent.

- Q7. Please provide copies of all General Accounting Office (GAO) and DOL Inspector General (IG) reports relating to Meridian Research, Inc., ERG, and the ergonomics rulemaking.